STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 28, 2001
v	No. 221294 Wayne Circuit Court
ANTONIO TUCKER, Defendant-Appellant.	LC No. 98-011039

Before: McDonald, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his convictions by a jury of possession with intent to deliver more than fifty but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii), possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). The trial court sentenced him to ten to twenty years' imprisonment for the cocaine conviction, one to twenty years' imprisonment for the heroin conviction, and one to four years' imprisonment for the marijuana conviction. We affirm.

Defendant first argues that the prosecutor failed to present sufficient evidence to support the convictions. Specifically, he contends that the prosecutor failed to prove the element of possession. We disagree. In evaluating a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. *People v Hellenthal*, 186 Mich App 484, 486-487; 465 NW2d 329 (1990). Possession of drugs may be found even when the defendant is not the owner of the controlled substance in question. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 478, amended 441 Mich 1201 (1992). Possession may also be joint, with more than one person possessing the substance. *Id.*

Additionally, possession may be either actual or constructive. *Id*. One constructively possesses a controlled substance when he has the right to exercise control over it and knows of

its presence. *Id.* To show constructive possession, there must be a link between the defendant and the controlled substance. *Id.*

Here, there were several factors linking defendant to the drugs. The police saw defendant exiting a room that contained the drugs, as well as a large amount of money. The same room contained several pieces of mail addressed to defendant at the residence in question. Moreover, defendant attempted to flee through a window after the police entered the house. These factors sufficiently supported defendant's convictions. Indeed, defendant's presence in the room that contained both the drugs and the pieces of mail supported a reasonable inference that defendant exercised control over the drugs. See *People v Richardson*, 139 Mich App 622, 625-626; 362 NW2d 853 (1984). Moreover, flight is circumstantial evidence of guilt. See, e.g., *People v Clark*, 124 Mich App 410, 413; 335 NW2d 53 (1983); see also *People v Cutchall*, 200 Mich App 396, 400-401; 504 NW2d 666 (1993), overruling on other grounds recognized by *People v Edgett*, 220 Mich App 686 (1996).

Defendant contends that a number of other individuals present in the residence at the time of the police raid may have possessed the drugs. While this may be true, there was still sufficient evidence proving that defendant was one of the possessors of the drugs. As noted earlier, possession may be joint. *Wolfe, supra* at 520.

Next, defendant argues that the trial court erred in refusing to instruct the jury regarding the misdemeanor of loitering in a place of illegal occupation, MCL 750.167(1)(j). Again, we disagree. We review the trial court's decision on this issue for an abuse of discretion. *People v Stephens*, 416 Mich 252, 265; 330 NW2d 675 (1982).

Defendant states in his appellate brief that "the court was not required to give an instruction to the jury on the misdemeanor charge of loitering in a place of illegal occupation because it is not a lesser-included offense of any of the crimes with which [defendant] was charged." Defendant contends, however, that we should extend the rule of *Stephens, supra* at 261-264, which sets forth a five-part test for determining when a lesser-included misdemeanor instruction should be given, to misdemeanors that are not lesser-included. However, the Supreme Court has noted that a lesser misdemeanor instruction is appropriate only if the lesser offense is included within the greater offense, see *People v Steele*, 429 Mich 13, 20-21; 412 NW2d 206 (1987), citing *Sansone v United States*, 380 US 343, 349-350; 85 S Ct 1004; 13 L Ed 2d 882 (1965), and we are not at liberty to contradict a ruling of the Supreme Court.

Even if we *were* to apply the five-part *Stephens* test to the instant misdemeanor request, we would find no basis for reversal. Indeed, the second element of the five-part test is whether an appropriate relationship exists between the charged offense and the requested misdemeanor. *Stephens, supra* at 262. This inherent relationship requires that the greater and lesser offenses relate to the protection of the same interests. *Id.* The misdemeanor of loitering in a place of illegal occupation, aimed at those disrupting the peace, see generally MCL 750.167(1), serves a different purpose from the drug statutes under which defendant was convicted, which are aimed at protecting the health, safety, and welfare of the people. MCL 333.1111(2). Accordingly, the second element of the five-part test was not established. The trial court did not abuse its discretion in refusing to give the requested instruction.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter

McDonald, J. did not participate.